

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION

UNITED STATES OF AMERICA,)
Plaintiff,)
vs.)
JAMES IAN PICCIRILLI,) CRIMINAL NO.:
Defendant.) 1:19-cr-00060-SDT-1

Baltimore, Maryland
January 13, 2020
1:30 p.m.

TRANSCRIPT OF PROCEEDINGS
SENTENCING HEARING
BEFORE THE HONORABLE STEPHANIE D. THACKER

For the Plaintiff:

Brandon Moore, Esquire
Patricia McLane, Esquire
Assistant U.S. Attorneys

For the Defendant:

Richard Bardos, Esquire

Also Present: Agent David Collier, ATF; Adam Smith, Probation
Judy Kahan, Paralegal

Proceedings recorded by mechanical stenography, transcript produced by computer.

Patricia G. Mitchell, RMR, CRR
Federal Official Court Reporter
101 W. Lombard Street, 4th Floor
Baltimore, Maryland 21201

1 P R O C E E D I N G S

2 (1:33 p.m.)

3 THE CLERK: All rise. This Honorable Court now
4 resumes in session, the Honorable Stephanie D. Thacker
5 presiding.

6 THE COURT: Thank you. You may be seated.

7 Will the Government call the case, please.

8 MR. MOORE: Yes. Good afternoon, Your Honor.

9 THE COURT: Good afternoon.

10 MR. MOORE: This is United States versus James Ian
11 Piccirilli. It's Criminal Number SDT-19-060. Brandon Moore
12 and Patricia McLane on behalf of the United States. Your
13 Honor, we are joined at counsel's table by David Collier; he's
14 the case agent here of the ATF. We are here today for
15 sentencing.

16 THE COURT: All right, thank you. Would defense
17 counsel please note your appearance as well.

18 MR. BARDOS: Good afternoon, Your Honor. Richard
19 Bardos representing Mr. Piccirilli who is present to my left.

20 Would it be all right with the Court if my paralegal
21 slash investigator came and sat at the table with us?

22 THE COURT: No problem.

23 MR. BARDOS: That would be Judy Kahan. Thank you,
24 Your Honor.

25 THE COURT: All right. Mr. Piccirilli and

1 Mr. Bardos, could you please stand, and I'll ask the clerk to
2 administer the oath to Mr. Piccirilli, please.

3 THE CLERK: Please raise your right hand.

4 (Defendant sworn.)

5 THE CLERK: Please state your full name for the
6 record.

7 THE DEFENDANT: James Ian Piccirilli.

8 THE CLERK: Thank you.

9 THE COURT: Okay, Mr. Piccirilli, on November 4,
10 2019, you pled guilty to possession of an unregistered firearm
11 in violation of 26 United States Code, Section 5861(d), as
12 charged in Count 1 of the Superseding Indictment filed against
13 you, and at that time I conditionally accepted the plea pending
14 the preparation of a presentence investigation report. Since
15 the time of the November 4, 2019, entry of your guilty plea in
16 this case, the United States Probation Office has prepared a
17 written presentence investigation report.

18 Mr. Bardos, did you receive a copy of the presentence
19 investigation report?

20 MR. BARDOS: Both the draft and the final, Your
21 Honor, yes.

22 THE COURT: Have you had the opportunity to review
23 those reports, the draft, and the final with Mr. Piccirilli?

24 MR. BARDOS: Yes, ma'am.

25 THE COURT: Mr. Bardos, having read the report and

1 discussed it with your client, is there any reason why
2 sentencing should not take place today?

3 MR. BARDOS: Not based on the report, no, Your Honor.
4 I think we're ready for sentencing.

5 THE COURT: Okay. Mr. Piccirilli, have you had the
6 opportunity -- you may be seated if you'd like, Mr. Bardos.
7 Mr. Piccirilli, have you had the opportunity to review the
8 report?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Have you also had the opportunity to
11 discuss its contents with your lawyer, Mr. Bardos?

12 THE DEFENDANT: Yes, I have.

13 THE COURT: Do you understand the contents of the
14 report?

15 THE DEFENDANT: Yes, I do.

16 THE COURT: All right. Are you prepared to proceed
17 to sentencing today?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Thank you. You may both take your
20 seats.

21 MR. BARDOS: Just to be clear, Your Honor, we've
22 reviewed the report. There are sections of it we disagree
23 with, which I think the Court is aware. As far as the content
24 other than the sentencing guideline computation, we have no
25 problems with the rest of it.

1 THE COURT: Okay, yes, I understand. I'm going to
2 get to the objections here in a second. If you'll be seated,
3 thank you.

4 The Court has carefully reviewed the January 2, 2020,
5 presentence investigation report as well as the draft
6 presentence investigation report, and I have also read the
7 defendant's factual and legal sentencing memoranda filed on
8 December 27, 2019, and January 1, 2020, respectfully --
9 respectively, I should say, and I have read the Government's
10 sentencing memorandum filed on December 30, 2019, as well as
11 its response to the defendant's sentencing memorandum which was
12 filed on January 6, 2020.

13 I have also read each and every one of the letters
14 that were submitted to the Court on January 10, 2020. In fact,
15 I've read them more than once and read them again today.

16 It appears to me that the defendant made, I guess,
17 one factual objection to the report that I think is resolved
18 and then one guideline enhancement objection to the report that
19 we'll also discuss, and the Government has made no objections
20 to the presentence investigation report. I have read all of
21 that.

22 So is it accurate for the Government that you have no
23 objections to the presentence investigation report?

24 MR. MOORE: That's accurate, Your Honor.

25 THE COURT: Mr. Bardos, as to your client, as I

1 understand it, factually the defendant initially objected to
2 the draft PSR, not including additional facts that were
3 supplied by the defendant during and after his presentencing
4 interview but that the final PSR has included those additional
5 facts, so it seems to me that factual objection may be
6 resolved. Is that accurate?

7 MR. BARDOS: It's resolved in part, Your Honor. The
8 author of the report put those facts in the section under
9 acceptance of responsibility. I think they belong in the
10 factual part. I think they are part of the facts of the case,
11 just like the statement of facts from the plea agreement. I
12 don't think they address acceptance of responsibility. First
13 of all, they didn't come from my client necessarily; they came
14 from me. And, secondly, they are intended to give a fuller
15 picture of the facts of the case beyond simply what was in the
16 agreed statement of facts. It's really sort of a technical
17 point.

18 THE COURT: I don't know if it's such a technical
19 point because from my standpoint, I was curious as to whether
20 Mr. Piccirilli is actually accepting responsibility, given some
21 of the language he sought -- you sought on his behalf to be
22 included in the presentence investigation report.

23 MR. BARDOS: I can clarify that, Your Honor.

24 THE COURT: Please do.

25 MR. BARDOS: There's no question that Mr. Piccirilli

1 accepts responsibility for the offense to which he pled guilty.
2 There is no question that he accepts responsibility for
3 owning -- for having in his possession the weapons that were
4 found at the time of the search in December of 2018. Where we
5 disagree is whether the possession of those weapons qualifies
6 for the enhancement, the four-level enhancement.

7 As to the four-level enhancement and the original
8 charge in the indictment, which was under 18 USC 922(o) which
9 requires a knowing and unlawful possession of weapons, that he
10 does dispute because our position is that those weapons were
11 not held in violation of the statute or in violation of the
12 guideline.

13 So as to the crime, 26 USC 5861(d) to which the Court
14 referred, he accepts responsibility fully for that. The
15 dispute seems to come with regard to other things that were not
16 necessarily part of that original plea.

17 THE COURT: Okay, and I understand that. Thank you.
18 We'll address that argument as to your objection to the
19 enhancement here in a little bit.

20 MR. BARDOS: Thank you.

21 THE COURT: Mr. Moore, do you have any position on
22 behalf of the Government as to whether that additional
23 information that was provided by Mr. Piccirilli should go in
24 the offense section or in the acceptance of responsibility
25 section of the pretrial sentencing report?

1 MR. MOORE: I do, Your Honor, and I actually think
2 that your observations are spot on. I think the facts in the
3 factual section are the ones that the parties agreed upon and
4 the ones that he agreed to at the plea hearing. Those are the
5 ones that are contained as part of the facts germane to the
6 offense.

7 I have two responses specifically to what Mr. Bardos
8 said. Obviously, the Government's first position is that some
9 of these facts that he is presenting are irrelevant to the law
10 applicable to the offenses as well as other offenses that
11 Mr. Bardos raises in his sentencing memo.

12 The second thing is, as you said, I think some of
13 these actually hit to the heart of whether he is fully
14 accepting all of the conduct, all the criminal conduct that's
15 encompassed here because, again, our position is that all of it
16 is criminal, and all of these additional facts are just ways to
17 sort of undermine that instead of actually accepting full
18 responsibility for that.

19 I agree with where they are. I would object to them
20 being placed into the actual facts. I think if those are
21 things that he wants to rely on, he's certainly capable of
22 doing that, but it's inappropriate to place it in that section
23 of the presentence report.

24 THE COURT: All right, thank you. The Court finds
25 that the additional facts supplied by the defendant during and

1 after his presentencing interview, which were included by the
2 probation officer in the presentence investigation report, are
3 appropriately included in the outside of the offense conduct
4 but in the acceptance of responsibility section so that the
5 Court can fully take everything into consideration. And the
6 probation officer did, in fact, add the material that the
7 defendant requested into the presentence investigation report
8 so that the Court has it before me today to consider.

9 Additionally, the Court finds sufficient indicia of
10 reliability to support the probable accuracy of the information
11 contained in the presentence investigation report.
12 Accordingly, the Court adopts the presentence investigation
13 report and as to all factual matters in the presentence report,
14 the Court adopts them as findings of fact.

15 Now as I understand it, just to clarify, Mr. Bardos,
16 the only remaining objection then is defendant's December 26,
17 2019, objection to the four-level guideline enhancement
18 pursuant to 2K2.1(b) (1) (B). It was the Court's understanding
19 initially that the defendant was not objecting to the
20 enhancement at that time but was instead providing information
21 it hoped would help convince the probation officer and the
22 Court the enhancement did not apply. However, because the
23 enhancement is included in the presentence investigation
24 report, the Court does note defendant's legal argument in his
25 sentencing memoranda that the enhancement should not apply and

1 the Government's arguments in response.

2 So you do maintain an objection to that enhancement;
3 is that correct, Mr. Bardos?

4 MR. BARDOS: Yes, Your Honor. I believe at the end
5 of the final presentence report, it says that the ultimate
6 decision on that enhancement will be left to the judge.

7 THE COURT: Correct. Thank you.

8 MR. BARDOS: Your Honor, can I ask for one
9 clarification?

10 THE COURT: Yes.

11 MR. BARDOS: So the Court adopted all factual matters
12 in the presentence report. Does that include information that
13 we were just discussing that was put in the acceptance of
14 responsibility because that's a series of facts? Or are you
15 not adopting those as well?

16 THE COURT: Yes, I'm adopting those as well.

17 MR. BARDOS: Thank you.

18 THE COURT: And will consider them when we get to the
19 acceptance of responsibility deduction or not.

20 MR. BARDOS: Thank you, Your Honor.

21 THE COURT: Thanks. At the November 4, 2019, plea
22 hearing, the Court deferred acceptance of final judgment on the
23 plea agreement until sentencing. At this time the Court
24 accepts the plea agreement on the grounds that the defendant's
25 plea adequately reflects the seriousness of the actual offense,

1 behavior and that accepting the agreement will not undermine
2 the statutory purposes of sentencing or the United States
3 Sentencing Guidelines. The Court's judgment and sentence will
4 be consistent with the plea agreement. Particularly, the Court
5 recognizes the plea was agreed upon pursuant to Federal Rule of
6 Criminal Procedure 11(c)(1)(C), and the Court is therefore
7 bound by the parties' agreement to impose a sentence of no more
8 than 36 months of imprisonment.

9 With respect to the statutory penalties,
10 Mr. Piccirilli stands convicted of possession of an
11 unregistered firearm in violation of 26 USC, Section 5861(d).
12 Federal law provides the following maximum penalties for
13 violating this statute: a term of imprisonment of not more than
14 10 years, a period of supervised release of not more than
15 3 years, a fine of not more than \$10,000, and a special
16 assessment of \$100.

17 Has the special assessment been paid yet?

18 MR. BARDOS: No, Your Honor.

19 THE COURT: The United States Sentencing Guidelines
20 are, of course, advisory and are not binding on this Court.
21 This Court may not presume that the guidelines range is
22 reasonable. Rather, the Court is required to calculate and
23 consider the applicable sentencing guideline range and also
24 consider the sentencing factors enumerated in 18 United States
25 Code, Section 3553(a). So I will begin by calculating the

1 advisory guidelines range.

2 Before I do that, the Court will address the
3 parties' arguments regarding that application of a four-level
4 enhancement based on the specific offense characteristic of the
5 number of firearms involved in the offense. U.S. Sentencing
6 Guidelines, Section 2K2.1(b)(1)(B), increases the base offense
7 level by four when the offense involved between 8 and 24
8 firearms. Application note 5 specifies that the guideline
9 applies to only those firearms that were unlawfully sought to
10 be obtained, unlawfully possessed or unlawfully distributed.
11 The presentence investigation report and the Government agreed
12 the sentencing enhancement applied.

13 Based on the submitted pleadings and support of their
14 respective positions of both parties, the Court understands the
15 Government's position to be that 19 firearms were involved in
16 this offense because they were unlawfully possessed by
17 Mr. Piccirilli. The Court understands Mr. Piccirilli's
18 position to be that the firearms were not unlawfully possessed
19 because Mr. Piccirilli did not know he was not permitted to
20 possess them and did not plead guilty to these firearms. The
21 Court further understands that the Government's position is
22 that the guidelines do not include a knowledge element because
23 26 USC, Section 5861(d), does not include a knowledge
24 requirement.

25 I will permit counsel each to make further arguments

1 in support of your positions if you desire. Mr. Bardos, I'll
2 call on you first since it's your objection.

3 MR. BARDOS: Thank you, Your Honor. It's an
4 interesting shift that's gone on in this case because the plea
5 agreement says that -- under paragraph 6B, the office, United
6 States Attorney's Office under United States Sentencing
7 Guideline 1B1.2(c), not 1.3 but 1B1.2(c), that the guidelines
8 level should be calculated as if the defendant pled guilty to
9 possessing all of the firearms admitted to in the statement of
10 facts set forth in Attachment A, and the offenses should be
11 grouped together.

12 So what that is referring to, in our opinion, Your
13 Honor, is the indictment, the charge in the indictment as if he
14 had pled guilty to that charge. That charge under Count 2, 3
15 and 4, and I'm going to focus on Count 2, is that he under --
16 in violation of 18 USC 922(o), that he knowingly possessed the
17 firearms in violation of Title 18. So what the plea agreement
18 is saying is that the Government is asking the Court to
19 consider as if Mr. Piccirilli, in addition to pleading to the
20 Tax Code violation under 26 USC 5861, that you should consider
21 that he also is pleading guilty to Count 2, knowingly
22 possessing all of these weapons in violation of Title 18.

23 It is that where the -- that is the point where the
24 parties disagree because our position is not only did he not
25 plead guilty to Count 2, we would have not pled guilty to Count

1 2 because there is a defense to Count 2, and that defense is
2 very simple. That is that at the time prior to the search of
3 his residence in December of 2018, his sister's house,
4 Mr. Piccirilli was under a federal firearms license and, in
5 fact, in December was still, as far as he knew, under that
6 federal firearms license. So that information was transmitted
7 to the Government by us. I don't know that they even knew what
8 Mr. Piccirilli's status was as far as he knew in December.

9 Because what happens is he is under a federal
10 firearms license for FJB Engineering -- I think we put all
11 this -- I'm just going to summarize, Your Honor. Unbeknownst
12 to Mr. Piccirilli, on October 11 of 2018, Mr. Bloom, the owner
13 of the company, writes to the ATF and says, "He's no longer
14 under our license."

15 Mr. Bloom doesn't tell Mr. Piccirilli this, doesn't
16 say anything to him. In fact, what happens is an employee, an
17 administrative assistant at FJB is telling Jim, "You are still
18 under the FFL," as late as November 2018.

19 So the question then becomes when he had these
20 weapons while he worked at FJB before the October 11 letter,
21 was his possession of these items legal? And our position is
22 it was because that's what his job was. His job was to work
23 for FJB, create, design, manufacture weapons, and then take
24 them to places so that --

25 THE COURT: So wouldn't you be arguing that the count

1 to which he pled guilty was also legal?

2 MR. BARDOS: No, Your Honor, because -- first of all,
3 he has these items as part of his job for FJB Engineering. His
4 actions with regard to Mr. McKenna, when he gave this gun to
5 Mr. McKenna, who is a licensed gun dealer to sell, were outside
6 of the realm of his activities for FJB Engineering. By the
7 time we got to December and he is on the phone trying to
8 transfer one of these weapons, there's no -- that all by itself
9 is the problem, that he cannot do and we've never contested
10 that.

11 The possession of them, however, is a holdover, a
12 continuation from his activities and his legal activities for
13 FJB Engineering. So my point then, Your Honor, is that at the
14 time -- if I could just step to the podium for a minute, Your
15 Honor?

16 THE COURT: Sure.

17 MR. BARDOS: This is one of the things I submitted as
18 an exhibit.

19 THE COURT: You mean you submitted as part of your
20 sentencing memoranda?

21 MR. BARDOS: Yes, ma'am. This is June 2018, it's
22 from FJB Engineering, and these are a series of weapons that
23 Mr. Piccirilli took to the Machine Gun Nest in June of 2018 as
24 part of his job at FJB Engineering, to have people try them
25 out, to see if people wanted to buy them as sales demos.

1 That's what he was doing. He kept these weapons because he was
2 taking them around to places. Then he had them in his house
3 and car in December when his place was searched.

4 My position is if, in fact, it's legal for him to
5 have them in June of 2018 because he was under the federal
6 firearms license, then it was legal for him to have it in
7 December of 2018 as far as he knew because he was still, to his
8 knowledge, under the same federal firearms license. And the
9 fact that Mr. Bloom had not taken him off of that license led
10 Mr. Piccirilli to believe --

11 THE COURT: Would you mind putting that up there
12 again, please, so I can look at it.

13 MR. BARDOS: Certainly, Your Honor.

14 THE COURT: You can continue your argument.

15 MR. BARDOS: The fact that as far as Mr. Piccirilli
16 was informed, Mr. Bloom had not taken him off of the federal
17 firearms license meant that, to him, Bloom was still interested
18 in having Jim sell -- using these things as sales demos to try
19 and make money for FJB Engineering. So my position is, Your
20 Honor, if in fact -- and I think it is correct -- that he was
21 allowed by the ATF regulations to have these guns in June, then
22 he was in exactly the same situation in December.

23 The only difference is that he was no longer actively
24 employed by FJB Engineering, but he still had the prototypes,
25 he still had the weapons, he still was trying to sell them on

1 behalf of FJB Engineering. So that is our position.

2 The other thing, Your Honor, so the shift here is
3 Count 2 is a violation of 18 USC 922(o). 922(o), under the
4 criminal statute, requires a knowing violation of the statute.
5 Our position is that he did not know he was in violation of
6 that statute.

7 We then shift now to this guideline and instead of
8 saying that it was unlawful for him to have these under 922(o),
9 the Government now says -- different than what was in the
10 indictment, different than what was at the plea. The
11 Government now says, wait a minute, those guns were not
12 registered and, therefore, they're unlawful because under 826
13 USC 5861, there's no scienter requirement; it's a strict
14 liability offense. That is much different than where we were
15 when we entered the plea and much different than what the
16 indictment says.

17 I would suggest that for an enhancement of four
18 levels which takes the bottom of these guidelines from 18
19 months to 30 months, so it adds a year to the guidelines -- I
20 understand they're not mandatory but still. Before a Court can
21 do that, there has to be a finding that Mr. Piccirilli had some
22 knowledge of -- that what he was doing was illegal, some
23 knowledge. That's what the *Corso* case says. The *Corso* case
24 says we refer back to the statute. It is true that if you were
25 only referring to 5861, there's no scienter requirement. But

1 the Government is talking about Count 2. They're talking about
2 all the other guns that were there that they allege were there
3 illegally under the criminal statute.

4 Our suggestion is that a four-level enhancement
5 should only apply if there is some level of intent similar to
6 what the criminal statute says. That is as close as I can get
7 under *Corso* because it doesn't address this directly. I
8 couldn't find anything else that talked about this particular
9 enhancement.

10 So I think that before the Court says I'm going to go
11 from 18 months to 30 months, I would ask the Court to look at
12 the circumstances under which he had these weapons, and that at
13 the time they were not registered, but he was not the person
14 who could register them. They weren't registered in June of
15 2018 either. The only person on the planet who could register
16 them was his employer, and if he didn't do it, he didn't do it.
17 If, in fact, these are FJB Engineering weapons and they're not
18 registered and that's a violation of the law, then FJB
19 Engineering was in violation of the law as well. And I don't
20 think that's the state of the law. I think that there's a
21 manufacturer here and the law is designed to allow them to go
22 out and use these as demos. And they are required to be
23 registered, but it wasn't Mr. Piccirilli's -- he couldn't
24 register them even if he wanted to, and if everything he had
25 had to be registered, he couldn't have done any of what his job

1 was.

2 So he was doing his job, he was no longer doing it
3 actively for FJB Engineering, but he was still involved in
4 using these as sales demos, and therefore we don't believe his
5 possession was unlawful under the guideline.

6 THE COURT: Okay. Thank you. Mr. Moore?

7 MR. MOORE: Thank you, Your Honor. My two broader
8 points is that all of these facts you see here, the receipts,
9 the factual proffer from the defendant, we don't agree with all
10 of them, but I'll get into that later when it's more
11 appropriate. These are all smoke screens because the reality
12 is possession of these firearms in any capacity for any reason
13 is simply unlawful, from the get-go, from the jump.

14 I will meet Mr. Bardos and the defense where they
15 are. Let's say we're in the realm of the applicable offense is
16 the 922(o), the possession of the firearm or of the machine gun
17 under Title 18. Take a look at the elements --

18 THE COURT: But the Government is not agreeing, are
19 you, that this is akin to him pleading guilty to a 922(g) as
20 opposed to this being part of the relevant conduct of 5861?

21 MR. MOORE: There's actually two separate questions
22 there if you break it down. I think the sense of pleading
23 guilty to the facts does literally plead you guilty to the
24 offenses which you're charged in the indictment, so in that
25 sense it's Title 18 922(o). But if you look at the actual

1 language of 2K2.1(b)(1), it just says unlawfully possessed. It
2 doesn't say unlawfully possessed under the language of the
3 statute.

4 Now if you look at *Corso*, *Corso*, of course, takes an
5 NFA offense and sort of applies that to the relevant conduct
6 that's there. So you would likely do the same thing here but
7 that's just that case. The guidelines don't actually require
8 you to graft the language from the indictment. Here the
9 guidelines just require you to find an applicable statute, and
10 if it's unlawful in that way, then that's the one you apply.
11 For instance, you could end up in a situation like this to
12 where one person could argue it's unlawful in one way and
13 that's certainly relevant conduct you should be held
14 responsible for, but then you can just throw in all these other
15 statutes in which it's not unlawful -- or which it is, in fact,
16 lawful but you could argue that it's lawful, and you create
17 sort of these side bar arguments.

18 The other thing that kind of struck a little bit, the
19 plea agreement negotiation process to where we're trying to
20 boil this down and then it's starting to get back into
21 reopening and relitigating the other counts that we're about to
22 dismiss. So I think that under the guidelines, if we can show
23 that -- if we can pick an applicable statute and show how
24 possession is unlawful under that, that meets the language of
25 2K2.1(b)(1).

1 I will say that even if you do decide that 922(o) is
2 the one that applies, it's just the legal framework just isn't
3 there for the defense to argue what they're arguing. The
4 elements of possessing a machine gun, I think there's four --
5 the possession, the knowing possession, it has to be a machine
6 gun. What I think that *Rehaif* does, and other cases too, is
7 sort of extend this knowing requirement to -- you at least are
8 substantially aware that the machine gun you're holding is, in
9 fact, a machine gun. All these facts lead up to that. There
10 is no element requiring him to also know that he isn't supposed
11 to be possessing it in the first place because this actually
12 equates to a mistake in the law. This is like I have to also
13 know that there is a statute prohibiting my possession. I
14 actually would submit it's actually more disadvantageous to
15 argue under 922(o) than just under the NFA.

16 If we can skip back to the NFA, I think the law is
17 very clear and I think the defense agrees actually in their
18 second sentencing memorandum that the relevant element here is
19 the registration of the firearms. They're not registered, he
20 admits that they're not registered. At least in terms of
21 Count 1, that's not registered to him and for all of the
22 remaining firearms, he admits that they're not registered to,
23 quite frankly, anybody. The bottom line is if you're a
24 manufacturer, you are required under the relevant statute and
25 ATF regulations to register that firearm within one business

1 day. Any successive possessor is not allowed to possess that
2 firearm whatsoever.

3 I tried to make this clear in the briefing because we
4 have all this talk of, "Well, I'm under an FFL. I'm supposed
5 to be manufacturing all these things, I'm supposed to be taking
6 these home and demonstrating them as sales samples." You can
7 do that if the firearms are registered. These aren't. So a
8 lot of these things are a little bit of smoke screen here.

9 The final point that I want to make is just very
10 simply with regard to the receipt that's shown because this is
11 something indicative that I'm going to point back to later when
12 we get to 3553(a) in that he's actually admitted to every
13 relevant fact to establish unlawful behavior under whichever
14 statute you want to apply, the 922(o) -- although here we would
15 ask you and, quite frankly, it's harder for us to prove under
16 the NFA, but what he does instead is he submits all of these
17 facts to sort of draw attention away. We see this receipt. We
18 see that the receipt is dated June of 2018. We see no receipts
19 from this time where he's no longer employed. We don't know
20 what the serial numbers are on these guns. What we don't see
21 is permission to hold the guns in the indictment at home from
22 the FFL. There's nothing showing that any of these firearms
23 are registered to him.

24 So our position is still that all of these are
25 unlawfully possessed because none of these are registered to

1 Mr. Piccirilli and at least the firearm in Count 1 -- he admits
2 is not registered to him --

3 THE COURT: That's the only count he pled guilty
4 to.

5 MR. MOORE: That is the only one but these are all
6 relevant, right? So --

7 THE COURT: Right, which is where I was starting in
8 the first place. It's my understanding that the Government's
9 argument is he only pled guilty to the single count and that
10 all of these other 18, I guess, firearms come into play as
11 relevant conduct and for grouping purposes for that enhancement
12 to apply and that's what's set forth in paragraph 6 of the plea
13 agreement.

14 MR. MOORE: Yes.

15 THE COURT: Is that accurate?

16 MR. MOORE: That's correct.

17 THE COURT: Okay.

18 MR. MOORE: Yes, so the analysis there is that
19 firearm offenses generally, plural, they group so that's how
20 that comes in. It doesn't have to be specific to this statute
21 or that statute. The guidelines say firearms offenses group
22 because we look at the sum of the harm as it builds up. So
23 that's how that comes back in. Again, when you look at the
24 cases, *Pineda* and *Hodge*, that talk about the other relevant
25 factors we look at to see if those come in as relevant, they're

1 not talking about statute-specific stuff. They're talking
2 about the actual conduct that's going on. Again, I think this
3 represents not -- I think this represents holding defendants
4 accountable not just to what they plead guilty to but the
5 actual wrong that occurs. Again, nowhere in 2K2(b)(1) does it
6 say that these have to be tied specifically to specific
7 statutes.

8 THE COURT: Okay. Would you like to respond to
9 Mr. Bardos's argument that the Government, that things sort of
10 shifted here from always pleading guilty to just this one count
11 to now he's pleading guilty to all these other counts?

12 MR. MOORE: I don't think there's a shift at all. I
13 think the plea agreement makes it quite clear that this is
14 going to be a dispute. He, in fact, admits to unlawful conduct
15 in all of these counts. He could have certainly negotiated to
16 put in all these other facts; he didn't. It's a negotiation.
17 It's a mutual process.

18 The second thing is from the very beginning, the
19 sentencing guidelines make it known that all relevant conduct
20 is on the table. All four -- all of these firearms are
21 included in the indictment. There are four different counts
22 there alleging four separate possessions of unlawful firearms.
23 This isn't a bait and switch. This is an intention from the
24 very beginning to hold him accountable to that. He obviously
25 has the right to dispute that, but he's been on notice of this

1 the entire time. I don't think this is a shifting of the
2 balance.

3 THE COURT: All right. Anything else, Mr. Moore?

4 MR. MOORE: Court's indulgence. Nothing further,
5 Your Honor.

6 THE COURT: Thank you. Mr. Bardos, do you have
7 anything in response to that argument?

8 MR. BARDOS: Your Honor, I understand what Mr. Moore
9 is saying and, as usual, he is articulate and convincing. I
10 don't disagree that the weapons that were found at the house
11 were not registered. My point is this. A violation of the Tax
12 Code under 28 USC 5861 is a criminal statute that is highly
13 unusual because it is a strict liability offense. You don't
14 have to know one way or the other -- you are required to only
15 possess something if it's registered, and even if you think it
16 is, that's not a defense to that.

17 Strict liability offenses are very rare in criminal
18 cases, so my position is if you're going to look at the
19 sentencing guidelines which generally cover, for the most part,
20 criminal offenses under Title 18, that in order to jump from a
21 low of 18 months to a low of 30 months, there should be more
22 than just holding a defendant to strict liability under the
23 guidelines. That's my position.

24 If the Court finds that 5861(d) is the relevant
25 statute with regard to this enhancement, then I think the

1 enhancement applies.

2 THE COURT: That's because it's a strict liability
3 statute. Is that --

4 MR. BARDOS: That's correct, Your Honor.

5 THE COURT: -- your understanding? Is there anything
6 else from Mr. Bardos or Mr. Moore?

7 MR. BARDOS: No. Thank you, Your Honor.

8 THE COURT: Okay, thank you.

9 All right. With regard to the objection over the
10 four-level enhancement pursuant to United States Sentencing
11 Guideline 2K2.1(b)(1)(B), the Court finds the four-level
12 increase for the specified offense characteristic does apply in
13 this case. Specifically, the Court makes the following
14 findings of fact and conclusions of law.

15 The original indictment in this case dated
16 February 7, 2019, identifies 19 firearms and sound suppressors
17 that fall within the National Firearms Act because they're
18 described in 26 United States Code, Section 5845(a), and
19 pursuant to *Staples v. United States*, 511 U.S. 600 (1994), that
20 elements of possession of an unregistered firearm are that the
21 defendant, one, knowingly possessed a firearm; two, that was
22 not registered to him; three, knew the firearm had the
23 characteristics that make it unlawful pursuant to 26 USC,
24 Section 5845(a). The defendant need not know that the firearm
25 is unregistered.

1 Mr. Piccirilli has pled guilty to possession of the
2 firearm listed in Count 1 of the original indictment. In the
3 stipulation of facts at pages 10 to 12 of Mr. Piccirilli's plea
4 agreement, he admits specifically at the top of page 12 to
5 knowingly possessing the 18 -- other 18 firearms listed in the
6 counts. In Counts 2 through 4 of the original indictment, he
7 further admits that he knew the firearms had the
8 characteristics that make them unlawful pursuant to the
9 National Firearms Act and that none of the firearms was
10 registered to him or any other person.

11 Mr. Piccirilli could not have possessed the firearms
12 lawfully for purposes of his employment as none of them were
13 registered to him or to any other person, pursuant to 27 CFR,
14 Section 479.103. In the ATF Handbook, firearm manufacturers
15 are required to register their firearms by the close of
16 business on the next business day after the firearms are
17 manufactured. Again, Mr. Piccirilli has admitted in the
18 stipulation of facts, page 12 of the plea agreement, that the
19 firearms were not registered to any person.

20 Pursuant to United States Sentencing Guidelines,
21 Section 1B1.2(c), a plea agreement containing a stipulation
22 that specifically establishes the commission of additional
23 offenses shall be treated as if the defendant had been
24 convicted of additional counts charging those offenses. Thus,
25 because Mr. Piccirilli admitted all of the elements of

1 possession of an unregistered firearm in violation of 26 USC,
2 Section 5861(d), with respect to all 19 firearms, he is
3 considered to have pled guilty to 19 counts of violating 26
4 USC, Section 5861(d), for purposes of guideline section
5 1B1.2(c).

6 All 19 counts of violating 26 USC, Section 5861(d),
7 not Section 922, again, these are treated as counts only for
8 sentencing purposes pursuant to the guidelines. These group
9 together pursuant to United States Sentencing Guidelines,

10 Section 3D1.2, because they are sufficiently connected or
11 related to warrant the conclusion that they are part of a
12 single episode spree or ongoing series of offenses.

13 Mr. Piccirilli possessed all the firearms in close time and
14 space proximity, and his arrest for the firearm identified in
15 Count 1 of the indictment led to the search where the other 18
16 firearms were discovered.

17 Because all 19 firearms were involved in the offense
18 and Mr. Piccirilli admits to unlawfully possessing them in
19 violation of 26 USC, Section 5861(d), U.S. Sentencing
20 Guidelines, Section 2K2.1(b)(1)(B), will apply to increase the
21 base offense level by four.

22 Mr. Moore, is there anything the Government would
23 like to say concerning my findings and conclusions with regard
24 to that enhancement?

25 MR. MOORE: No, Your Honor.

1 THE COURT: Mr. Bardos, is there anything you would
2 like to say?

3 MR. BARDOS: No. Thank you, Your Honor.

4 THE COURT: Of course, your objection is noted.

5 So as to the total offense level, starting with the
6 base offense level, the Court finds that the presentence
7 investigation report correctly calculates the total offense
8 level, the criminal history and the guideline ranges,
9 specifically the relevant United States Sentencing Guideline
10 for a violation of 26 USC, Section 5861(d), is found in United
11 States Sentencing Guidelines, Section 2K2.1(a).

12 The base offense level for a violation of the statute
13 for which Mr. Piccirilli is convicted is level 18 because the
14 offense involved a firearm described in 26 USC, Section
15 5845(a). The specific offense characteristics of the offense
16 include the total number of firearms involved in the offense,
17 that is, 19, which ranges the offense level by four levels. So
18 18 plus 4 accordingly raises the offense level to a 22.

19 Now with regard to acceptance of responsibility
20 pursuant to United States Sentencing Guidelines, Section
21 3E1.1(a), the presentence report does provide for a two-level
22 decrease for acceptance of responsibility. However, I'd
23 actually like to hear from the parties as to whether that
24 two-level acceptance of responsibility reduction should be
25 applicable given the concerns raised earlier as to whether or

1 not Mr. Piccirilli is actually accepting responsibility for the
2 crime with which he is convicted, considering the additional
3 factual material which is now included under acceptance of
4 responsibility but is adopted as findings of fact. It sounds
5 like he might not be accepting responsibility.

6 Would you like to make argument on that, Mr. Bardos?

7 MR. BARDOS: Yes, Your Honor. I'm not entirely sure
8 the source of the Court's concern, but I can relieve you of
9 that. Mr. Piccirilli understands fully that at the time that
10 he was -- that he had this weapon, it was not registered. It
11 was not registered to him, it was not registered at all, and
12 that under the strict liability of the tax code, he is
13 responsible for that. He has never challenged that. I didn't
14 challenge that in my objections, and we haven't challenged it
15 today. He fully accepts that and understands that. He doesn't
16 like it, but he understands that.

17 The difficulty, what we've raised -- it goes in part
18 to the guidelines and I'm not going to redo that argument, but
19 it also goes to 3553(a). In other words, when I first got this
20 case and I would talk to people about it, and I'd say I had a
21 client who was found with ten machine guns in his house and
22 everybody has the same response, "Oh, my God." It's a bad case
23 if that's what's going on. It's a different case if he had a
24 job and he was under a federal firearms license, and he was
25 allowed to have them in other respects other than the

1 registration.

2 What I've submitted is in part with regard to the
3 guideline itself but really more to give the Court some basis
4 for understanding how this man, who has never been in trouble
5 in his life, ends up before Your Honor with these 19 weapons
6 that are unregistered. That's really -- so it was really more
7 a context to explain how we got to where we were, not in any
8 way to contest the fact that what he did was illegal.

9 THE COURT: Thank you. I appreciate that
10 clarification, Mr. Bardos.

11 Does the Government have anything it would like to
12 say in response with regard to acceptance of responsibility,
13 with regard to the two-level decrease first?

14 MR. MOORE: Yes. I say that I make these comments
15 very carefully because it is certainly a defendant's right to
16 contest the Government's evidence. It's certainly the
17 defendant's right to put on his view of what happened and to
18 sort of prove or show what the appropriate level, amount of
19 response is from the criminal justice system in terms of the
20 conduct that actually happened. So I'll try to stick as much
21 as possible to the bare-bone facts of what's going on here.

22 I'll note by pointing out that Mr. Piccirilli
23 obviously is very accepting of responsibility in terms of the
24 legal basis for his conviction under Count 1. The firearm not
25 being registered to him, that it is an NFA firearm, he's not

1 supposed to have it. I note, so the record is clear, the
2 commentary to 3E1.1 which is the acceptance of responsibility
3 guideline under the guidelines, it tells us that acceptance of
4 responsibility isn't just truthfully admitting to the conduct
5 comprising the offenses of conviction, and it also involves the
6 truthful admitting or not falsely denying any additional
7 relevant conduct for which the defendant is accountable, the
8 relevant conduct.

9 Here's where it gets iffy. The Government obviously
10 does not agree with Mr. Piccirilli's view of the facts. In
11 fact, we've asked and I don't think any evidence has been
12 proffered to actually sufficiently sustain Mr. Piccirilli's
13 view of the facts. I think you've gotten a lot of papers but
14 nothing actually proving what he's saying and disproving what
15 we're saying. In fact, as I said in the sentencing memorandum,
16 it just doesn't make sense. I say that only to mention those
17 things, but I leave that up to you, Your Honor. Again, it's
18 firmly the Government's position that he does at least have the
19 right to challenge what our view of the facts are and to
20 present his own view of the facts.

21 THE COURT: All right. Anything else, Mr. Bardos, on
22 that?

23 MR. BARDOS: Your Honor, I hope the Court understands
24 because I'm doing my best to try to explain it, there was a
25 plea discussion here. As the Court may recall, initially there

1 was a discussion about pleading to the attempted transfer of
2 this --

3 THE COURT: I recall.

4 MR. BARDOS: So Mr. Piccirilli was agreeing that that
5 was improper as well. The Court advised counsel, and we thank
6 you for that, that there was no violation of the tax code for
7 that. So there's been no question that Mr. Piccirilli has
8 admitted his responsibility and his liability here. Where we
9 disagree, and I do have a witness here who will present what
10 Mr. Moore refers to as evidence with regard to Mr. Piccirilli's
11 understanding of his status in the fall of 2018 --

12 THE COURT: I assume that's one of your character
13 witnesses?

14 MR. BARDOS: Yes, ma'am.

15 THE COURT: Okay.

16 MR. BARDOS: Where we disagree is the facts as it
17 relates to the other charges in the indictment. I think we are
18 entitled to say we pled to this, and we accept this and we are
19 wrong for this; we didn't do that other stuff, we don't think
20 that's a violation of the law. I wrote it down. What the
21 Court found today is 19 counts for sentencing purposes of 26
22 USC 5861(d). And I think I've already admitted that.

23 THE COURT: You did.

24 MR. BARDOS: We don't contest that, Your Honor. But
25 there is an argument from Mr. Piccirilli's point of view of

1 whether he was in knowing violation of Title 18 because I think
2 that does make a difference. I think you'll hear that there's
3 a big difference between a person who happens to have a bunch
4 of machine guns in his house and a person who's worked with
5 guns and designed guns and worked with law enforcement for 15
6 years. Those are just different things.

7 Would a jury find that he was in knowing violation of
8 Title 18? Perhaps. But I think we are entitled to say we have
9 facts that suggest otherwise without losing the two levels for
10 acceptance of responsibility on this count. Thank you,
11 Judge.

12 THE COURT: Thank you, I appreciate that. The Court
13 finds that pursuant to United States Sentencing Guidelines,
14 Section 3E1.1(a), which provides for a two-level decrease for
15 acceptance of responsibility, the Court finds that the
16 defendant has accepted responsibility for the offense by
17 pleading guilty before trial and by truthfully admitting the
18 conduct comprising the offense as Mr. Bardos has pointed out.
19 Mr. Piccirilli has admitted all of the elements of the offense
20 of conviction, 5861(d). And as both the Government, rightfully
21 so, and Mr. Bardos point out, Mr. Piccirilli has the right to
22 contest the evidence otherwise and to put this in context for
23 the Court for sentencing purposes, as well as part of the
24 consideration or your argument at least for that, the prior
25 four-level enhancement for the 19 firearms.

1 So the two-level enhancement -- not enhancement, I'm
2 sorry -- deduction will apply. So that brings the offense
3 level down to a 20.

4 All right. Section 3E1.1(b) provides for an
5 additional one-level decrease if the offense level prior to the
6 adjustment -- of the offense level prior to the adjustment for
7 acceptance of responsibility was 16 or greater, and the
8 defendant assisted authorities in the investigation or
9 prosecution of his own misconduct by timely notifying the
10 authorities of his intention to enter a plea of guilty. The
11 guidelines require that the Government must make a motion for
12 this one-level decrease.

13 Does the Government make that motion?

14 MR. MOORE: Yes, Your Honor.

15 THE COURT: All right. The third-point reduction for
16 acceptance of responsibility then decreases the offense level
17 to 19. The Court finds that the total offense level is 19.
18 The Court further finds that Mr. Piccirilli has a total of zero
19 criminal history points from any prior convictions. According
20 to the sentencing table, zero criminal history points
21 establishes a Criminal History Category of I.

22 So the advisory sentencing guideline range, given a
23 total offense level of 19 and a Criminal History Category of I,
24 the advisory sentencing guideline range is as follows: a term
25 of imprisonment of 30 to 37 months, a period of supervised

1 release of 1 to 3 years, a fine of 10,000 to \$100,000, and a
2 special assessment of \$100. There is no mandatory minimum
3 sentence as to the count of conviction.

4 Also per the guideline sentencing table, a total
5 offense level of 19 falls in zone D which is ineligible for
6 probation pursuant to United States Sentencing Guidelines,
7 Section 5B1.1, comment note 2.

8 Also I note though the guidelines provide for a fine
9 of between 10,000 and \$100,000, the statutory maximum fine for
10 a violation of 26 USC, Section 5861(d), is 10,000.

11 Mr. Moore, is there anything the Government would
12 like to add or say with regard to my calculations?

13 MR. MOORE: Nothing further, Your Honor.

14 THE COURT: Mr. Bardos, the same question, anything
15 you would like to say in regard to my calculations?

16 MR. BARDOS: No, I think that's accurate, Your
17 Honor.

18 THE COURT: I want to also make clear in terms of my
19 calculations in particular with regard to the four-level
20 sentencing enhancement for the 19 firearms, that 18 USC,
21 Section 922(o), doesn't factor into the decision-making process
22 there at all.

23 Section 3553(a) of Title 18 of the United States Code
24 provides several factors that the district court must consider
25 when determining the appropriate sentence. Specifically, the

1 Court must consider the nature and circumstances of the
2 offense, the history and characteristics of the defendant, the
3 need for the sentence imposed to reflect the seriousness of the
4 offense, to promote respect for the law, and to provide just
5 punishment for the offense, to afford adequate deterrence to
6 criminal conduct, to protect the public from further crimes of
7 the defendant, and to consider the need for the sentence to
8 provide the defendant with needed educational or vocational
9 training, medical care or other corrective treatment in the
10 most effective manner.

11 The Court is also instructed by Section 3553(a) to
12 consider any pertinent policy statement issued by the
13 Sentencing Commission that is in effect on the date of
14 defendant's sentencing, the need to avoid unwarranted sentence
15 disparities among defendants with similar records who have been
16 found guilty of similar conduct, and the need to provide
17 restitution to victims, if any, of the offense.

18 Section 3553(a) also instructs the Court to consider
19 the kinds of sentences available and the advisory sentencing
20 guideline range. I've already calculated the applicable
21 guideline range and will take it, along with the 3553(a)
22 factors, into account when determining the appropriate sentence
23 in this case. As I've noted, I've carefully reviewed all of
24 the pleadings filed on behalf of both the defendant and the
25 United States with regard to the sentencing today, but I will

1 permit counsel, each of you, to address any of the Section
2 3553(a) factors you deem relevant in the circumstances of this
3 case.

4 The Government, Mr. Moore?

5 MR. MOORE: Thank you, Your Honor. The Government is
6 recommending 36 months of imprisonment here for Mr. Piccirilli.
7 That's consistent with a few things. It's, first of all,
8 consistent with the agreed-upon range in the plea agreement,
9 and it's also consistent with the top end of the guidelines.
10 I'd say that notwithstanding the guidelines, I think under
11 3553(a), this is just independently sufficient but not greater
12 than necessary, it's the appropriate sentence.

That's so for several different reasons. The first factor that we look at is the seriousness of the offense. This offense is serious in many ways. I think the most obvious is the type of firearms involved which the Supreme Court has said several times that these are pretty much the highest, the more highly dangerous firearms that can still be legally possessed in the United States and that's because they are highly dangerous in two ways.

21 The first is when you're dealing with a fully
22 automatic weapon or a machine gun, it can actually expel more
23 than one bullet with one pull of the trigger. This means that
24 you can pull the trigger in many cases and expel as many
25 bullets until you run out. I think in the Government's

1 sentencing memorandum, we try to do a good job of just
2 describing the sheer amount of harm that could do to the
3 public.

4 I've given numbers about the active shooting
5 incidents in the United States that happened over the most
6 recent available data that we have through the FBI, and one
7 shooter with a bump stock which is similar but not the same.
8 It's not the same because it's not a fully automatic firearm,
9 but it behaves largely in that way. And how this one shooter
10 accounted for a very, very large percentage of people hurt or
11 killed in that few-year span in just 11 minutes. Eleven
12 minutes. That's not even a fully automatic firearm. That's of
13 concern here.

14 Then you look at the number and the type. We keep
15 saying 19 firearms, 19 firearms. The Government says firearms
16 because statutorily that's how the definition goes down, but
17 some of these are, in fact, guns that we would think of --
18 machine guns, like I said, that are fully automatic. Others
19 are just short-barreled rifles. Both of those are dangerous.
20 The Supreme Court says that the short-barreled rifle is
21 dangerous because it's more accurate. You're hitting these
22 targets. These are military-style weapons that are just being
23 sold to an unknown person, that are being stored in someone's
24 house, being stored in someone's car.

25 THE COURT: Were there also suppressors?

1 MR. MOORE: I was just getting to that. Then we're
2 getting into the silencers. The silencers, as Mr. Piccirilli's
3 own sentencing memoranda underscore, is that these are to
4 silence these weapons, make them more dangerous in that way but
5 also to make them more accurate, to increase the accuracy when
6 you're shooting those things. That compounds the concern here.

7 We're looking at the number, we're looking at the
8 type, we're looking at the variety, and then we're coming back
9 down to, well, we just don't know where they came from.
10 Mr. Piccirilli argues that the ones in the other counts,
11 Count 2, I believe, Count 3 and 4, are coming from his
12 employer. Conveniently, what no one has said is where the
13 weapon from Count 1 is coming from. The Government doesn't
14 know, and Mr. Piccirilli is silent on that. We don't know. We
15 don't know where those guns are coming from.

16 What we do know is he had them, and he wasn't
17 supposed to. We do know that he's a lawful firearm owner. We
18 do know that he's capable of converting regular firearms into
19 NFA ones, and as he's already admitted, he was specifically in
20 the practice of doing that. So, of course, the most harmful
21 inference we have to draw is that he was not supposed to have
22 these things but was capable of making them himself, and these
23 places where he says he's getting them from are likely not the
24 places he's actually getting those from, particularly because
25 we actually have no idea where he got the one in Count 1.

1 The second thing that increases the seriousness of
2 this offense is not just the type and number and variety of the
3 firearms and where they were found. It's also that this, as
4 Mr. Bardos has said, is a tax code violation. This is about
5 the registration of firearms. The ATF, the federal government,
6 they depend on people being truthful on these forms. They
7 depend on being able to track where these firearms originate,
8 whose hands they go into and what they are used for because if
9 they're used for a dangerous purpose, we need to figure out
10 who's responsible for that. Not necessarily that we're going
11 to hold the manufacturer accountable for it, but we need to see
12 where down the line blame should start and then what we can do
13 as a society to correct sort of the errors in that chain.

14 When you create a firearm as highly regulated as this
15 and there is no paper trail for that whatsoever, that certainly
16 increases the seriousness of that offense. When you have 19 of
17 those firearms, that certainly increases the seriousness of
18 that offense.

19 I had mentioned before in passing, but I'll dive a
20 little bit deeper into it now. I said that a lot of these
21 proffered facts don't make sense. Mr. Piccirilli paints the
22 transaction in Count 1, the attempted sale in October, as sort
23 of like the sale that he tries to do in the right way. He
24 tries to do it very cleanly, tries to do it by the books,
25 giving it to an FFL. The FFL is the one who sets the

1 transaction and the price and all the things thereafter. I can
2 certainly appreciate that point of view, but I disagree because
3 in a sense, that's describing an unlawful transaction from the
4 very beginning.

5 I find it hard to see how you can take an
6 unregistered firearm that comes out of thin air, give it to an
7 FFL and make it a lawful transaction when neither you or the
8 FFL can hold on to that thing. I certainly take no calm in
9 that scenario that you then only contact the seller simply
10 because you confirm it with your FFL friend. This is
11 laundering an unregistered firearm and then trying to make it
12 lawful. That, again, is just dangerous in and of itself
13 because we have to assume sort of the worst possibility when
14 somebody tries to do that.

15 Again, it subverts the entire system that's in place
16 for us to track these things. If something were to happen with
17 that, we would have no idea that that started with
18 Mr. Piccirilli. In fact, we don't even know if that starts
19 with Mr. Piccirilli. So it's perpetuating sort of this type of
20 behavior.

21 And then we have this story that he's lawfully able
22 to possess all of the remaining firearms under the FFL. I'm
23 still waiting for documentary evidence of that because that's
24 certainly not our position, and it just makes no sense. You're
25 engaging in the same sort of conduct, same sort of unregistered

1 type of firearm under a completely different auspice that you
2 had just done it back in October. You're now trying to tell us
3 that these aren't related at all? Other people are to blame
4 for both of these things? And that as similar as they are and
5 as numerous as they are, this is all a misunderstanding on my
6 part.

7 There's been much talk about the NFA being sort of
8 strict liability in terms of registration, and I think this is
9 why. Freed says that there are some public safety statutes
10 where it's okay to have a strict liability standard as to some
11 of the elements. This is one. These are so dangerous that we
12 don't want to give people that opportunity to say this is a
13 misunderstanding. We see that. The law here is complicated,
14 there are a lot of exceptions, a lot of reasons why people can
15 hold these. It's a nonstarter. This is the exact reason why,
16 this specific scenario.

17 This brings me into the history and characteristics
18 of the defendant. Normally here we are encountered with people
19 who are just prohibited generally from possessing firearms, and
20 we sort of harp on how their past tendencies sort of show us
21 why people shouldn't have firearms like this. I think
22 Mr. Piccirilli comes from an entirely different background.
23 That's a little bit of a blessing and curse. It's a blessing
24 because it sort of holds back on some of these really dangerous
25 ones. There's no violence in his past that I'm aware of that

1 we can then attribute perspective, sort of fearful actions on
2 his part.

3 But it's also a curse. It's a curse because this is
4 someone who paints himself as a firearms expert who apparently
5 is in contract with the military, working with police
6 departments, all of these other FFLs, and yet he is
7 incapable -- if you see it his way -- completely incapable of
8 knowing even the bare-bone facts to whether I can even legally
9 possess these in the first place. I don't think you can have
10 it both ways. I don't think you can be so sophisticated in the
11 law and yet assert ignorance at the time where it's finally
12 coming to bear. At the time when you have two completely
13 different incidents, guns from two completely different
14 sources, now it's time for ignorance. I don't think that's the
15 way it works.

16 The second thing is that Mr. Piccirilli notes that
17 he's not the typical gun defendant. That's absolutely true.
18 Our typical gun defendants are not capable of manufacturing in
19 private the type of firearms that Mr. Piccirilli is. That's
20 concerning because if someone goes rogue, which the facts
21 certainly suggest that Mr. Piccirilli did, there's no way to
22 track that number of firearms that are getting put out into the
23 public.

24 The second thing is that we end up in the situation
25 where we are to where somebody is really well skilled with all

1 these regulations, with all these loopholes, and gets involved
2 in transactions with other people, and is now relying on all of
3 these different things without coming back home to the simple
4 fact that he had these things and he wasn't supposed to; that
5 he had these things and it's part of an entire string of
6 conduct; that he had these things and here we are now.

7 I spoke briefly about deterrence. I think deterrence
8 is important for Mr. Piccirilli. In fact, the Government's
9 recommendation is important for Mr. Piccirilli because he knew.
10 I completely understand that for a huge group of people in this
11 country, the Second Amendment right to bear arms is incredibly
12 important. It's the Second Amendment in the Constitution. I
13 heartily understand that. People use firearms for a variety of
14 different reasons. I was in a sentencing the other day where
15 it's like in some communities, gun ownership is secret, but in
16 some, it's very well public.

17 I understand from Mr. Piccirilli's background, it's
18 probably more of the public. This was a large part of his
19 life. This was his livelihood, it was his expertise. Already
20 being prohibited from possessing these firearms did not stop
21 this conduct, not once but twice. It did not stop this conduct
22 in terms of even selling it to a person he had not met. The
23 reality remains that he knew nothing about this person and that
24 he was going to give them all the materials to convert it back
25 to being a legal firearm and that while he's on that phone

1 call, he's going to talk about this gun but not talk about this
2 gun, but that's okay because this is a legal transaction, which
3 doesn't add up.

4 The second thing is we go back to the tax code. The
5 purpose of that is so other law-abiding citizens know that you
6 are supposed to maintain a paper trail from the day these
7 things are manufactured, all the way through the current
8 possessor, of where these things are coming from. Again, we're
9 not talking about handguns. We're talking about some of the
10 more highly regulated firearms that we have. We have to send a
11 message to other people -- this is broader deterrence, not
12 personal deterrence -- this type of conduct just simply isn't
13 tolerated with weapons of these kind. It's just not.

14 So I think given the sum of those things, someone
15 with this expertise, someone who engaged in these transactions,
16 a lot of these things don't add up, the number or type of the
17 firearms, the type of code involved, the number of people
18 placed at risk. I'm coming up with it now, it's also a curse
19 in another way in that Mr. Piccirilli was a police officer.
20 It's respect for the law. It's undermining that. He knows
21 that.

22 For all of these reasons, we think that 36 months is
23 sufficient but not greater than necessary to meet the aims of
24 3553(a). Thank you, Your Honor.

25 THE COURT: All right. Thank you.

1 Mr. Bardos, I'll ask for your argument with respect
2 to the Section 3553(a) factors. And as part of that, now is
3 the time if you'd like to put on your three character
4 witnesses, you may do that. I caution that the three character
5 witnesses should not be cumulative, excessively cumulative of
6 one another. So I'll hear your argument and your witnesses now
7 on that, and then I'll hear from Mr. Piccirilli if he chooses
8 to say anything at a later point.

9 MR. BARDOS: Thank you, Your Honor. Just as a form
10 of introduction, the Court determined the guideline range and
11 did so accurately, and it does fall within zone D. I would
12 simply point out that particularly under the *Gall* case, the
13 guidelines aren't mandatory which the Court has already
14 identified. In fact, oddly, in the *Gall* case, his guidelines
15 were 30 to 37 months, and the Supreme Court approved a
16 probation sentence for Mr. Gall. You may think it's impossible
17 once you decide the sentence, but under the guidelines, it is
18 not impossible to give this man probation. I would like to
19 present the reasons why we think that's an appropriate
20 sentence.

21 THE COURT: I appreciate that and accept that and
22 understand that the guidelines are not -- are advisory only.

23 MR. BARDOS: Thank you, Your Honor. Just as a -- to
24 finish my introduction, I don't disagree necessarily with the
25 Government's position on the serious nature of the offense. I

1 do disagree with the fact that they seem to assume -- I believe
2 Mr. Moore said this -- assume the worst. I'm not sure that's
3 really what sentencing is about, and I'm not sure that applies
4 necessarily to Mr. Piccirilli. But we agree the concept of
5 unregistered firearms is a difficult one, and it creates a
6 serious offense. The fact that it's under a tax code doesn't
7 mean it's not serious. It does, however, mean that it's a
8 strict liability offense, and I think that is slightly
9 different than your run-of-the-mill criminal offense.

10 In addition, Your Honor, I'm going to ask for an
11 exception to the Court's order. I have two people who are
12 going to speak. The third person is Mr. Piccirilli's
13 grandmother, and she has asked if she can come up with her
14 daughter. It is possible that the two of them may have
15 something to say, and that would be a total of four people.
16 But if the Court would allow that, they need to come up
17 together, if that's all right.

18 THE COURT: How old is Mr. Piccirilli's grandmother?

19 MR. BARDOS: I'm not supposed to tell you a woman's
20 age in public, Your Honor. I'm not going to do that. May I
21 have a moment? In her 90s, Your Honor. She doesn't look that
22 way. I can tell you that.

23 THE COURT: I don't see anybody in the audience that
24 looks like they're in their 90s for sure, but yes, I'll allow
25 that as long as, again, we don't get too cumulative with these

1 witnesses.

2 MR. BARDOS: I understand, Your Honor.

3 MR. LEWIS: Good afternoon, Your Honor.

4 THE CLERK: Sir, please state your full name for the
5 record.

6 MR. LEWIS: David L. Lewis, L-e-w-i-s.

7 THE CLERK: Thank you.

8 MR. BARDOS: Mr. Lewis, what do you do for a
9 living --

10 THE COURT: Is Mr. Lewis under oath?

11 THE CLERK: No. Do you want him to take the stand?

12 MR. BARDOS: Not from our perspective, Your Honor.

13 THE COURT: All right. Mr. Moore?

14 MR. MOORE: No, if the testimony is strictly to
15 3553(a), I have no issue.

16 THE COURT: All right, go ahead.

17 MR. BARDOS: How do you know the defendant -- sorry,
18 what do you do for a living?

19 MR. LEWIS: I'm a circuit court bailiff in Carroll
20 County.

21 MR. BARDOS: What did you do before that, just in
22 general?

23 MR. LEWIS: Police officer for 37 years. I did 27
24 years with Maryland Park Police down in Montgomery County,
25 retired from there, and then I came up and did 10 years with

1 the Sykesville Police Department in Carroll County.

2 MR. BARDOS: How do you know Mr. Piccirilli?

3 MR. LEWIS: I met Jim my first year at Sykesville,
4 2003.

5 MR. BARDOS: Did you work with him?

6 MR. LEWIS: Yes, he eventually came on as a
7 Sykesville auxiliary police officer.

8 MR. BARDOS: One of the issues before the Court is
9 the defendant's character. Would you like to tell the Court
10 what you know about his character from your experience.

11 MR. LEWIS: He is probably the most gentle, trusting
12 person I've ever met in my life. I'm proud to call him my
13 friend. I would trust him with my wife, my children, my home,
14 my property. There's absolutely no question he would do
15 anything in the world for me, and I would do anything in the
16 world for him.

17 MR. BARDOS: Briefly, as his experience as a police
18 officer, where did he fit on the sort of nonaggressive,
19 aggressive spectrum that we find sometimes with police
20 officers?

21 MR. LEWIS: That was a problem when he said he wanted
22 to come on as a police officer, wanted to put himself through
23 the Anne Arundel County Police Academy and become a police
24 officer. I was a little concerned because Jim did very, very
25 well with cooperative witnesses and victims, but when it came

1 to a suspect or uncooperative person, he didn't do very well
2 because he was just too nice of a guy. A police officer has to
3 be able to at least pretend to be authoritative and take
4 control of a situation. Jim just couldn't do that. He was
5 just too nice.

6 MR. BARDOS: Okay. Finally, one of the issues before
7 the Court is whether Mr. Piccirilli will receive a jail
8 sentence and the impact that would have on him. What is your
9 view on whether jail would be appropriate for Mr. Piccirilli?

10 MR. LEWIS: I absolutely think it would not be
11 appropriate for Jim. Jim was making a living, and as far as I
12 can tell, he thought he was doing everything correctly. And I
13 don't think a jail sentence is appropriate at all.

14 MR. BARDOS: Thank you.

15 MR. LEWIS: Can I say one more thing?

16 MR. BARDOS: Okay.

17 MR. LEWIS: Just from what I've heard today, it
18 sounds like the wrong person sitting in this chair.

19 MR. BARDOS: That's okay.

20 MR. LEWIS: Thank you.

21 THE COURT: Mr. Lewis, I also have read your letter,
22 your January 9, 2020, letter in addition to your testimony
23 today, and I appreciate receiving that.

24 MR. LEWIS: Very good, thank you. Permission to step
25 back, Your Honor?

1 THE COURT: Yes.

2 MR. BARDOS: Judge, just to introduce this particular
3 person, I put in my papers that there were conversations from a
4 person who worked at FJB Engineering with Mr. Piccirilli
5 regarding Mr. Piccirilli's status under the federal firearms
6 license. Brooklyn is the person who had those conversations,
7 so she will also talk about that, as well as how she knows
8 Mr. Piccirilli.

9 THE COURT: All right. Thank you.

10 THE CLERK: Please state your full name for the
11 record.

12 MS. SALISBURY: Brooklyn P. Salisbury.

13 THE CLERK: Thank you.

14 MR. BARDOS: Ms. Salisbury, how do you know
15 Mr. Piccirilli?

16 MS. SALISBURY: I met him when he was a police
17 officer in Brunswick, Maryland.

18 MR. BARDOS: How long have you known him?

19 MS. SALISBURY: About ten years.

20 MR. BARDOS: At any point in time did you work for
21 FJB Engineering?

22 MS. SALISBURY: Yes.

23 MR. BARDOS: What was your job there?

24 MS. SALISBURY: I was hired as a secretary, but I got
25 kind of passed around each department as an administrative

1 assistant to get things organized.

2 MR. BARDOS: Did you work with Mr. Piccirilli?

3 MS. SALISBURY: Yes.

4 MR. BARDOS: You're familiar with his work at FJB
5 Engineering?

6 MS. SALISBURY: Yes.

7 MR. BARDOS: What did he do there?

8 MS. SALISBURY: This term -- the name Frank gave him
9 was firearms expert was what he had me put on his business
10 card.

11 MR. BARDOS: To your knowledge, was Mr. Piccirilli
12 ever under the federal firearms license at FJB Engineering?

13 MS. SALISBURY: Yes.

14 MR. BARDOS: Did you have conversations with
15 Mr. Piccirilli in the fall of 2018 about whether Mr. Piccirilli
16 was still on that FFL?

17 MR. LEWIS: Yes.

18 MR. BARDOS: Can you tell the Court what happened?

19 MS. SALISBURY: Per Mr. Bloom, I was under the
20 impression that the ATF had to come in and do an investigation
21 to remove anybody being a user for the FFL. I informed Jim
22 multiple times that there was no ATF agent that came. Frank
23 had never mentioned to me anything about removing Jim --

24 THE COURT: Is "Frank" Mr. Bloom?

25 MS. SALISBURY: Yes, I'm sorry. Yes. Frank had

1 never mentioned anything to me about removing Jim from the FFL
2 at that time. He wouldn't even speak about Jim, honestly, in
3 regards to everything going on. So I did everything that went
4 through the ATF, so I was still under the impression that he
5 was on the license as well.

6 MR. BARDOS: Did you tell Mr. Piccirilli that?

7 MS. SALISBURY: Yes.

8 MR. BARDOS: Do you remember how frequently?

9 MS. SALISBURY: Probably every two or so weeks when
10 he'd ask.

11 MR. BARDOS: That he was still under the FFL?

12 MS. SALISBURY: Yes.

13 MR. BARDOS: Are you also a friend of his?

14 MS. SALISBURY: Yes.

15 MR. BARDOS: You submitted a letter to the Court that
16 the Court has read --

17 MS. SALISBURY: I did not.

18 MR. BARDOS: You did not?

19 MS. SALISBURY: I did not, no.

20 THE COURT: Thank you, I was looking for that. I
21 didn't think your name rang a bell.

22 MR. BARDOS: One of the issues before the Court is to
23 assess the character of Mr. Piccirilli. Can you give the Court
24 your opinion of his character?

25 MS. SALISBURY: That he's a really good guy. He

1 would do anything for anyone, and he wants to see everybody
2 win. He tries -- he's a good guy.

3 MR. BARDOS: Do you think he's a danger --

4 MS. SALISBURY: No.

5 MR. BARDOS: -- to society?

6 MS. SALISBURY: No.

7 MR. BARDOS: Thank you.

8 THE COURT: All right.

9 MR. BARDOS: Next, Your Honor, would be my third
10 character witness, parts A and B.

11 THE COURT: Understood.

12 THE CLERK: Please state your names for the record.

13 MS. DAVIS: Mary Helen Davis.

14 MS. PICCIRILLI: Mary Kathleen Piccirilli.

15 THE CLERK: Thank you.

16 THE COURT: Mrs. Davis and Mrs. Piccirilli, I've read
17 both of your letters as well about your grandson and son, and I
18 appreciate those. I understand the need for you two to be up
19 here together to speak in support of him.

20 MS. DAVIS: Thank you. What do you want me to say?

21 MR. BARDOS: Mr. Piccirilli has lived with you over
22 the past year?

23 MS. DAVIS: Yes. We've become -- sorry -- very
24 close... I can't...

25 THE COURT: Is there Kleenex on the counsel table

1 anywhere?

2 MR. BARDOS: There will be.

3 MS. DAVIS: Jim, can you come hold my hand?

4 THE DEFENDANT: Your Honor, is that okay with you?

5 THE COURT: Yes.

6 MS. DAVIS: Thank you.

7 THE DEFENDANT: It's okay. It's okay.

8 MS. DAVIS: It worked real well because he could take
9 care of me while being with me. I ask him so many questions,
10 and he gives me full answers that I understand. He takes care
11 of the television. He walks me back to the bedroom. He
12 tussles my head. He's very, very, very kind. Anything I want,
13 I get what I want, plus.

14 Of course, I've known him since he was an infant, and
15 I know my husband had a very close relationship with him
16 because there were things that Jim liked, my husband liked, and
17 so he shared all the things with him. Jim drew a picture which
18 we have hanging of a -- I call it a Christmas layout. My
19 husband did many train layouts, and Jim would help him with the
20 tracks. He would draw things because he was very artistic.
21 Jim would ask him to draw, he would do it.

22 But I noticed when he was around one year old when he
23 was learning to walk, he walked by a chair that happened to be
24 a swivel chair and it moved, and he got down and looked under
25 it to see what it did.

1 MR. BARDOS: So he's been living with you since he
2 was released last February?

3 MS. DAVIS: Uh-huh.

4 MR. BARDOS: Have you discussed this case with him?

5 MS. DAVIS: Very little. He doesn't want me --

6 MS. PICCIRILLI: -- to be upset.

7 MS. DAVIS: -- to be upset.

8 MR. BARDOS: So he's been with you for the last 11,
9 almost 12 months?

10 MS. DAVIS: Yes.

11 MR. BARDOS: Is there anything else you want the
12 Court to know about your grandson before she decides the
13 sentence?

14 MS. DAVIS: I just think he's one of God's gifts. He
15 has so much in his head. Things keep going, popping into his
16 head. Like he hears music and he was able to transfer that
17 music from his head to his guitar so I could hear what he was
18 doing. When I asked him questions, I don't get a yes or a no
19 or "Oh, Grandmom." You know, it's full detail --

20 MS. PICCIRILLI: Respect.

21 MS. DAVIS: Pardon?

22 MS. PICCIRILLI: Respect.

23 MS. DAVIS: Yes, a lot of respect. He's so gentle.
24 And he was telling me about some of the things he had designed
25 and the reasons for his designing. One thing that I remember

1 was something that shot two bullets or whatever it is at the
2 same time because some of the people who had to handle firearms
3 were women and they were small, and he was trying to find
4 things that would help them. I don't remember much of any
5 other talk about firearms.

6 MS. PICCIRILLI: Also the robot at school. He was
7 working with someone at the ATF. They were ready to design
8 something that --

9 MS. DAVIS: They were talking about that, something
10 that would help the policemen again.

11 MS. PICCIRILLI: At high schools.

12 MS. DAVIS: Okay, and what was the other thing? It
13 was one other thing he told me about.

14 THE COURT: It's okay if you don't remember
15 everything precisely right now. I've read everything in your
16 letter. It was a beautiful letter that you wrote in support of
17 your grandson.

18 MS. DAVIS: Thank you.

19 MS. PICCIRILLI: He doesn't deserve any of this, none
20 at all. Really. His heart is just made of gold.

21 MS. DAVIS: I think that kind of sums it.

22 MR. BARDOS: Thank you.

23 MS. PICCIRILLI: Thank you for listening.

24 THE COURT: Yes.

25 Would you like to make further argument, Mr. Bardos?

1 That was your last witness, wasn't it?

2 MR. BARDOS: My last witnesses, yes, Your Honor.

3 THE COURT: Witnesses, yes. Would you like to make
4 further argument with regard to the 3553(a) factors?

5 MR. BARDOS: I would, Your Honor. Obviously, all
6 defendants are not created equal. I think that's clear from
7 your experience, from everybody's experience, from the Supreme
8 Court's direction -- directives. This defendant finds himself,
9 after years of helping law enforcement, encouraging law
10 enforcement, working with the military, trying to make things
11 better -- so the Government talked about the suppressor which I
12 think I put in my papers. No disrespect to Mr. Moore, but it's
13 a little inaccurate to say that a suppressor makes a bullet
14 more accurate because it, in fact, does the opposite. It looks
15 that way on television. What happens is a suppressor, because
16 it suppresses the sound, it sort of absorbs the sound, but if
17 it's in contact with the shooting apparatus, it vibrates it.
18 So it's less loud but it's also less accurate.

19 What Mr. Piccirilli was designing was something that
20 would suppress the sound but not contact the metal, so it would
21 make law enforcement and the military far more accurate without
22 revealing their locations. That's the thing that he was
23 working on.

24 So you have this man who started out as a police
25 officer, went on to design and assist in the design of weapons,

1 and then ultimately it's a job doing that. He was under three
2 different federal firearm licenses, and in order to become a
3 responsible person under a federal firearms license, he has to
4 be vetted. He's got to submit -- got to have his background
5 check, an ATF has to approve him. He was approved specifically
6 under Frank Bloom's FJB Engineering license as a responsible
7 person. So there's some indication here, contrary to the
8 picture painted by the Government, that this man is not rogue,
9 that he is, in fact, dedicated to his craft and to the people,
10 the law enforcement and military that he was attempting to
11 help.

12 All of that is gone now. Everything he's worked on
13 for the past 15 years is gone now. So should there be a
14 punishment for this serious offense? Absolutely. I would
15 suggest that a fair amount of punishment has already taken
16 place. He is a convicted felon. That is not Mr. Piccirilli.
17 He is now no longer allowed to even hold any weapon of any
18 sort. That is directly contrary to the last 15 years of his
19 life. He is, as the letters describe -- again, contrary to the
20 Government's presentation -- a kind-hearted, gentle person
21 which is so contradictory to the idea of what he did here. It
22 is just very, very contradictory to the idea that he is
23 attempting to sell this weapon through a dealer -- I'm not
24 saying that what he did was okay. I'm not excusing it, but
25 there's a context here.

1 It's one thing to go out on the street and just sell
2 to some random person. He did not do that. He gave it to a
3 dealer that he knew. He checked with that dealer, and he
4 actually says, is this guy okay? He shouldn't have been doing
5 that because it was unregistered, and you can't sell a machine
6 gun to a civilian anyway, but within that context, he is trying
7 to be as careful as he can.

8 I would note that the weapon -- we've been talking
9 about Count 1. I was talking about Count 1 as the count that
10 he pled guilty to, the criminal information, not Count 1 of the
11 indictment. But I think it's the same weapon. So when he gave
12 it to Mr. McKenna, the dealer, the gun was not put together.
13 Mr. McKenna held on to that weapon for a month and then gave it
14 to the ATF. At the time he gave it to the ATF, it had been cut
15 and made into a working machine gun. So it was those parts --
16 and parts of a machine gun, whether they're together or not,
17 are considered a machine gun under the statute. It was those
18 parts that Mr. Piccirilli was on the phone discussing in
19 December of 2018.

20 So I'd ask the Court as you look at -- it's a
21 balance, right? There's all these different factors, and I'm
22 actually, frankly, much happier to be here than up there in
23 light of that. When you look at Mr. Piccirilli's 38 years, he
24 hasn't even had a speeding ticket in almost 15 years. He is in
25 all other aspects a law-abiding, positive contribution to

1 society. This he did wrong. He should not have had
2 unregistered weapons, he should not have been trying to sell
3 it. There's no question about that. But everything else that
4 he's done, as to his nature and characteristics, would suggest
5 that a jail sentence is far too severe for Mr. Piccirilli.

6 I will reflect back finally on the idea that these
7 are strict liability offenses because that, I think, is much
8 different. Yes, they need to be punished and I agree with the
9 Government that there's a reason for that, but a strict
10 liability offense in criminal cases is very different than a
11 full intent crime. So he's admitted to this because they
12 weren't registered but that doesn't mean his intentions were
13 malicious in any way, and I don't think there's been any
14 suggestion of that.

15 With that, Your Honor, our recommendation would be a
16 probation sentence, a condition be 18 months' home confinement,
17 with or without work as the Court decides, 200 hours of
18 community service, and a fine of \$10,000 to be paid within 30
19 days.

20 THE COURT: I'm sorry, a fine of \$10,000, you said?

21 MR. BARDOS: Yes, ma'am.

22 THE COURT: Do you have anything further at this
23 point?

24 MR. BARDOS: I think I've said enough.

25 THE COURT: I want to give you all the opportunity

1 you need.

2 MR. BARDOS: No, I appreciate that, Your Honor.

3 Thank you.

4 THE COURT: Thank you. All right, the Court has
5 carefully considered the January 3, 2020, presentence
6 investigation report and the position statements filed by each
7 party, as well as counsel's arguments here today and the
8 testimony or the proffers of the character witnesses, and the
9 Court will make findings with respect to the Section 3553(a)
10 factors when it announces its sentence.

11 Mr. Moore, is there anything else that the Government
12 would like to say before the Court imposes sentence?

13 MR. MOORE: No, Your Honor.

14 THE COURT: All right, thank you.

15 Mr. Bardos, is there anything more that you or
16 Mr. Piccirilli would like to say before the Court imposes
17 sentence? And in particular, Mr. Piccirilli, if there is -- I
18 want to tell you if there's anything you would like to say on
19 your own behalf, now is your opportunity. You don't have to
20 speak if you don't want to, and I won't hold it against you if
21 you don't. On the other hand, if there's something you'd like
22 to say to the Court before I impose sentence, before I make the
23 decision in your case, I'll be happy to hear from you.

24 THE DEFENDANT: Your Honor, if you have any issues of
25 the acceptance of responsibility, I assure you that I

1 understand, and I'm sorry to the U.S. Government and Congress
2 and the laws violated there.

3 It is my life, it's gone now. All the things that I
4 have engineered, all the things that we've done, you know, a
5 large group of us, everything that we've made and all the
6 advancements we had and some of the prototype stuff and
7 everything that I had and everything, it's gone. So I guess...
8 I don't know. I don't know, Your Honor, but please don't worry
9 about the self-acceptance.

10 THE COURT: The acceptance of responsibility?

11 THE DEFENDANT: Yes.

12 THE COURT: Yes. I'll note for the record that the
13 Court did give you the three-point reduction for acceptance of
14 responsibility, and I understand your statement in that regard.

15 Is there anything further, Mr. Piccirilli?

16 THE DEFENDANT: No, Your Honor.

17 THE COURT: Mr. Bardos?

18 MR. BARDOS: No. Thank you, Your Honor.

19 THE COURT: All right. You can be seated.

20 THE DEFENDANT: Thank you.

21 THE COURT: The guidelines generally take into
22 account the information relevant to sentencing in this
23 particular case and give that information appropriate weight.
24 After considering the advisory guideline range and the
25 applicable factors from Section 3553(a) of Title 18 of the

1 United States Code and the arguments presented here today,
2 including Mr. Piccirilli's arguments in favor of a downward
3 variance, I do find that a sentence within the applicable
4 sentencing guideline range is appropriate and find that the
5 sentence of 30 months' imprisonment, followed by 3 years of
6 supervised release, which is within the applicable guideline
7 range, is a reasonable and appropriate sentence for the
8 following reasons.

9 With regard to the history and characteristics of the
10 defendant, Mr. Piccirilli is a 38-year-old male who appears
11 before the Court convicted of his first offense. His personal
12 history certainly depicts an individual who has had a good
13 upbringing with the love and support of his parents, his
14 grandparents, his extended family, and all of the friends and
15 family who are in court today to support Mr. Piccirilli. Up
16 until now, he has lived a life well within the law. He
17 obtained his GED and gained additional education by attending
18 local community colleges. He is in good health and a father of
19 two.

20 The defendant's employment history includes working
21 as a police officer, a job where he was sworn to uphold the
22 law, designing and making firearms for approximately 15 years,
23 as well as providing demonstrations and showing prototypes of
24 weapons to federal and state agencies, including the Pentagon,
25 the United States Marine Corps, police departments and several

1 gun shops. This employment history cuts both ways, however,
2 because with this background, particularly as a police officer
3 and with the trust that was bestowed in connection with making
4 firearms for 15 years, Mr. Piccirilli would be expected to know
5 the law and to obey the law well within the confines of the
6 law.

7 The other thing that cuts both ways about this is
8 that Mr. Piccirilli is capable of manufacturing these types of
9 weapons in the future and did do so. Certainly he has -- the
10 Court finds that he has significant expertise in this area.

11 With regard to the nature and circumstances of the
12 offense, the Court finds that Mr. Piccirilli unlawfully
13 possessed 19 firearms that are prohibited by the National
14 Firearms Act. Mr. Piccirilli knew the firearms had the
15 characteristics that make them prohibited. Mr. Piccirilli left
16 one of these unregistered firearms with another person who
17 happened to be working with the Bureau of Alcohol, Tobacco and
18 Firearms and whose possession was also illegal because the
19 firearm itself was unregistered and who Mr. Piccirilli did not
20 know. That person was supposed to facilitate the unlawful sale
21 of the registered firearm -- of the unregistered firearm.

22 Mr. Piccirilli spoke with the potential buyer on the
23 phone and made statements indicating that he knew the unlawful
24 nature of his conduct, and those statements are set forth in
25 the amended presentence investigation report at paragraphs 12

1 through 27.

2 Before the sale could be completed, ATF arrested
3 Mr. Piccirilli for his unlawful conduct. Mr. Piccirilli had 18
4 more prohibited firearms in his vehicle and home. Those
5 firearms were found and seized as a result of search warrants
6 issued after his arrest.

7 With respect to the need to reflect the seriousness
8 of the offense, promote respect for the law and to provide just
9 punishment, the Court finds this offense to be an extremely
10 serious one. The potential, albeit the offense of conviction a
11 strict liability one, it is nonetheless an extremely serious
12 offense. The potential for danger and risk to the public is
13 immense when an unlicensed person possesses unregistered
14 weapons of this nature and/or attempts to sell them to any
15 other person. This is a highly dangerous type of weapon and
16 the seriousness is increased in these types of offenses, in
17 Title 26 offenses, because there is no paper trail. The
18 seriousness of this offense is even greater given
19 Mr. Piccirilli's former role as a police officer and as an
20 expert in firearms, capable of manufacturing these types of
21 weapons.

22 The Court believes for these reasons that a term of
23 imprisonment is necessary to promote respect for the law. The
24 Court also finds the need to provide a just punishment is
25 supported by a term of imprisonment, given the seriousness of

1 the offense and the history of the defendant.

2 As to the need to afford adequate deterrence, the
3 Court agrees with the Government that a term of imprisonment is
4 necessary to afford adequate deterrence for Mr. Piccirilli.

5 Mr. Piccirilli is a former police officer and claims to be an
6 expert in firearms making. In fact, he is an expert in
7 firearms making. He was responsible for knowing that it was
8 unlawful to possess and/or sell unregistered firearms, and his
9 actions and omissions show that he did have such knowledge.
10 Yet Mr. Piccirilli continued to violate the law by possessing
11 19 unregistered firearms and attempting to sell one of them.

12 With respect to the need to protect the public from
13 further crimes of the defendant, the Court agrees with the
14 Government that the potential for Mr. Piccirilli committing
15 further crimes of this nature is a danger to the public because
16 the possession and/or attempted sale of unregistered machine
17 guns poses a great threat to public safety in general. And as
18 noted, Mr. Piccirilli has the capability to create and/or
19 obtain more prohibited firearms.

20 Though advisory, Mr. Piccirilli is ineligible for
21 probation pursuant to the guidelines. Further, I reject
22 Mr. Piccirilli's request for a downward variance to a sentence
23 of 3 years' probation. The extent of such a variance is
24 extreme given the guideline sentencing range of 30 to 37
25 months, 36 when you consider the plea agreement. And there is

1 no justification sufficiently compelling to support any
2 variance, let alone one of that degree which would wipe out
3 imprisonment completely.

4 For all of the reasons I've stated, the Court
5 declines to vary from the guidelines range. That's noted
6 though it is not presumed reasonable, the guidelines
7 established a sentencing range of 30 to 37 months'
8 imprisonment. Based on all of the sentencing factors, the
9 Court finds that a sentence at the bottom of the guidelines is
10 reasonable because it is sufficient but not greater than
11 necessary to serve the purpose of sentencing, given the
12 particular circumstances of this offense and of this particular
13 defendant.

14 Therefore, it is the judgment of the Court that the
15 defendant be committed to the custody of the Bureau of Prisons
16 for a term of 30 months. Upon release from prison, the
17 defendant shall be placed on supervised release for a term of
18 3 years. Within 72 hours of release from custody, the
19 defendant shall report in person to the United States Probation
20 Office in the district to which the defendant is released.

21 Mr. Piccirilli, while on supervised release, you must
22 not commit another federal, state or local crime. You must not
23 possess a firearm or other dangerous device, and you must not
24 unlawfully possess a controlled substance. You also must
25 comply with the standard terms and conditions of supervised

1 release as recommended by the United States Sentencing
2 Commission and as adopted by this court.

3 In addition, Mr. Piccirilli shall comply with the
4 following special conditions of supervised release:

5 Mr. Piccirilli, you must participate in a substance abuse
6 program and follow the rules and regulations of that program.
7 The probation officer will supervise your participation in the
8 program. And you must submit to substance abuse testing to
9 determine if you have used a prohibited substance.

10 You must participate in mental health treatment in a
11 mental health treatment program and follow the rules and
12 regulations of that program. The probation officer, in
13 consultation with the treatment provider, will supervise your
14 participation in the program.

15 At the November 4, 2019, plea hearing, the Government
16 provided you, Mr. Piccirilli, with notice of its intent to seek
17 forfeiture pursuant to Federal Rule of Criminal Procedure 32.2,
18 pursuant to 26 United States Code, Section 5872, and the
19 Court -- the Government has so moved, and the Court orders
20 forfeiture of all 19 firearms involved in this offense. That
21 is those firearms described in Counts 1 through 4 of the
22 original indictment. Pursuant to 28 United States Code,
23 Section 2461(c), the procedures in 21 United States Code,
24 Section 853, apply to all stages of the criminal forfeiture.
25 The disposal provisions described in 26 USC, Section 5872(b),

1 shall also apply.

2 So the Government has moved for -- the Government has
3 filed a motion for a preliminary order of forfeiture, and that
4 order is granted.

5 With respect to the fine, the Court imposes a \$10,000
6 fine which is the statutory maximum pursuant to 26 United
7 States Code, Section 5871. The fine is due immediately. To
8 the extent Mr. Piccirilli cannot immediately comply, the Court
9 finds that pursuant to his plea agreement, the defendant has
10 agreed the United States may fully employ all powers to collect
11 on the total amount of the debt as provided by law. Until the
12 judgment is satisfied, the defendant has agreed to disclose all
13 assets and permit the financial litigation unit to obtain a
14 credit report and view his federal and state income tax returns
15 in order to evaluate Mr. Piccirilli's ability to pay.

16 The Court finds that there is no identifiable victim
17 here. Accordingly, the Court does not order the defendant to
18 pay restitution.

19 Finally, the Court orders the defendant to pay a
20 special assessment due immediately of \$100. To the extent
21 Mr. Piccirilli cannot immediately comply, the Court finds that
22 pursuant to the plea agreement, the defendant has agreed the
23 United States may fully employ all powers to collect on the
24 total amount of the special assessment.

25 For reasons other than those already discussed, does

1 counsel for the defendant or for the Government know of any
2 reason why the sentence should not be imposed as stated? I'll
3 start with the defendant.

4 MR. BARDOS: Your Honor, can we approach?

5 THE COURT: Yes.

6 (Bench conference on the sealed record.)

7 (It is the policy of this court that every guilty plea and
8 sentencing proceeding include a bench conference concerning
9 whether the defendant is or is not cooperating.)

10 (Bench conference concluded.)

11 MR. BARDOS: Your Honor, we would also ask if the
12 Court would consider recommending a camp for Mr. Piccirilli in
13 light of his lack of criminal record and recommend that the
14 Bureau of Prisons place him in a place as close to Baltimore as
15 possible.

16 THE COURT: Okay. Does the Government have a
17 position as to the recommendation of a camp?

18 MR. MOORE: No position, Your Honor.

19 MR. BARDOS: Obviously, it would be up to the Bureau,
20 but they do take into consideration the Court's
21 recommendation.

22 THE COURT: All right. Thank you for that.

23 MR. BARDOS: Your Honor, I do have one more item. I
24 think we're in agreement on this. Mr. Piccirilli has been on
25 various forms of release since last February and has complied,

1 I think as Pretrial put it, satisfactorily because that's the
2 highest level you can do for pretrial. We would ask that he'd
3 be allowed to remain on the same conditions of release until he
4 self-surrenders once the Bureau of Prisons designates him.

5 THE COURT: Yes. I agree with that and will permit
6 him to self-surrender, and I'll address that in a minute.

7 Otherwise, I order that the sentence be imposed as
8 stated. With regard to recommendations to the Bureau of
9 Prisons, the Court will recommend that the defendant be
10 assigned to the extent possible to a facility as close to
11 Baltimore as possible, given his family and other support
12 that's here in the Baltimore area, and the Court will also
13 recommend that the Bureau of Prisons assign Mr. Piccirilli to a
14 camp facility to the extent possible.

15 Mr. Bardos, have you spoken to your client about any
16 appeal rights that he may or may not have?

17 MR. BARDOS: I have not, Your Honor, but I believe
18 the plea agreement waives them, but I will talk to him about
19 that.

20 THE COURT: Okay. The plea agreement does --
21 Mr. Piccirilli, in your plea agreement, you waived your right
22 to appeal the Court's sentence, among other things. I wanted
23 to advise you of that, and Mr. Bardos is also going to make
24 sure that you understand that plea waiver which was also
25 something we went over at the time of your plea hearing, and

1 that is contained in paragraph 11 of the plea agreement.

2 Also, Mr. Bardos, please make sure -- and I will
3 advise you as well, Mr. Piccirilli -- that if you choose to
4 file a notice of appeal, you must do so in writing within 14
5 days from the entry of the Court's judgment in this case.

6 Is there a motion for leave to dismiss the remaining
7 charges in the indictment, Mr. Moore?

8 MR. MOORE: Yes, Your Honor.

9 THE COURT: All right. The Court grants the motion
10 to dismiss what I believe are Counts 2, 3 and 4 of the
11 indictment?

12 MR. MOORE: Just to clarify, he pled guilty to the
13 superseding information, so the entire indictment is going to
14 get dismissed.

15 THE COURT: Thank you. So the entire indictment is
16 dismissed. The entire indictment contained four counts; is
17 that correct?

18 MR. MOORE: That's correct, Your Honor.

19 THE COURT: So the only thing remaining was the
20 superseding information which only contained the one count to
21 which Mr. Piccirilli pled guilty; is that correct?

22 MR. MOORE: Yes, Your Honor.

23 THE COURT: Now that's clear.

24 With regard to the voluntary surrender, I have
25 received the report from Pretrial Services that indicates that

1 Mr. Piccirilli has performed satisfactorily while out on
2 personal recognizance pending sentencing. Does the Government
3 object to Mr. Piccirilli remaining -- voluntarily surrendering?

4 MR. MOORE: There's no objection, Your Honor.

5 THE COURT: All right. Then the Court will allow
6 Mr. Piccirilli to voluntarily surrender to the Bureau of
7 Prisons. I find that he has offered clear and convincing
8 evidence through the Pretrial Services report that he's not
9 likely to flee and is not likely to pose a danger to any other
10 person or the community if released. Accordingly, I order that
11 Mr. Piccirilli be permitted to surrender voluntarily at the
12 institution designated by the Bureau of Prisons as notified by
13 the United States Marshal. The defendant shall remain released
14 subject to the conditions set forth in the order setting
15 conditions of release previously filed and the standard
16 conditions of release in this district.

17 So as to the date, the defendant shall voluntarily
18 surrender to the United States Marshals Service on March 16,
19 2020, which is a Monday, and before I end the hearing,
20 Mr. Piccirilli, I want to remind you of two more things.
21 First, if you knowingly fail to report as ordered to the
22 Marshals Service on March 16, 2020, I may impose an additional
23 sentence upon you of up to 5 years in prison or a \$250,000 fine
24 or both.

25 Second, if you commit any offense whatsoever before

1 your voluntary surrender date, then in addition to this
2 sentence that I just imposed today and in addition to any
3 sentence for any additional offense, I must impose an
4 additional sentence. If the offense you commit is a felony, I
5 must sentence you to an additional term of imprisonment of up
6 to 10 years. If the offense you commit is a misdemeanor, I
7 must sentence you to an additional term of imprisonment of up
8 to one year. These sentences would run consecutively, that is,
9 one after the other rather than concurrently.

10 Have I left anything out, or is there anything
11 unclear or confusing about the sentence or any mistake or
12 problem that anyone would like to point out? For the
13 Government?

14 MR. MOORE: The Government does not believe you've
15 left anything out, Your Honor.

16 THE COURT: For the defense, is there anything more
17 you want to add?

18 MR. BARDOS: No. Thank you, Judge.

19 THE COURT: Any problem? Is the probation officer
20 here?

21 PROBATION OFFICER: Yes, Your Honor.

22 THE COURT: Is there anything that you want to add or
23 anything that's confusing?

24 PROBATION OFFICER: No, Your Honor.

25 THE COURT: All right. Then before I conclude the

1 hearing, I want to just say one more thing, Mr. Piccirilli.
2 During your colloquy with the Court during your allocution, I
3 think you mentioned a couple of times that your life is gone.
4 I understand the sense in which you meant that because of the
5 nature of what your career has been.

6 But I want to assure you your life is not gone. You
7 have all of these people in the courtroom here supporting you
8 today, and I don't expect that that will change. So good luck
9 to you, Mr. Piccirilli.

10 Court is adjourned.

11 THE CLERK: All rise. This Honorable Court now
12 stands adjourned.

13 (Proceedings concluded at 3:30 p.m.)

14 I, Patricia G. Mitchell, RMR, CRR, do hereby certify
15 that the foregoing is a correct transcript from the
16 stenographic record of proceedings in the U.S. versus
Piccirilli matter.

17 Dated this 1st day of August 2021.

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21 Patricia G. Mitchell
Official Court Reporter

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